

FEDERAL RULES OF APPELLATE PROCEDURE

FEDERAL CIRCUIT RULE

- (2) If anything material to either party is omitted from or misstated in the record by error or accident, the omission or misstatement may be corrected and a supplemental record may be certified and forwarded:
 - (A) on stipulation of the parties;
 - (B) by the district court before or after the record has been forwarded; or
 - (C) by the court of appeals.
- (3) All other questions as to the form and content of the record must be presented to the court of appeals.

Practice Notes

Daily Copy. Using daily transcript copy in lengthy trial proceedings can reduce or eliminate appellate delay in awaiting transcription after trial.

Procedures to Expedite Delivery of Transcripts. District courts and regional circuit councils have procedures to expedite transcripts that may be available to counsel experiencing difficulty with late delivery of transcripts by court reporters.

Rule 11. Forwarding the Record

- (a) **Appellant's Duty.** An appellant filing a notice of appeal must comply with Rule 10(b) and must do whatever else is necessary to enable the clerk to assemble and forward the record. ~~If there are multiple appeals from a judgment or order, the clerk must forward a single record.~~
- (b) **Duties of Reporter and District Clerk.**
 - (1) **Reporter's Duty to Prepare and File a Transcript.** The reporter must prepare and file a transcript as follows:
 - (A) Upon receiving an order for a transcript, the reporter must enter at the foot of the order the date of its receipt and the expected completion date and send a copy, so endorsed, to the circuit clerk.
 - (B) If the transcript cannot be completed within 30 days of the reporter's receipt of the order, the reporter may request the circuit clerk to grant additional time to complete it. The clerk must note on the docket the action taken and notify the parties.
 - (C) When a transcript is complete, the reporter must file it with the district clerk and notify the circuit clerk of the filing.

Rule 11. Forwarding the Record

- (a) **Retaining the Record; Certified Copy of the Docket Entries; Physical Exhibits; Archival Storage.**
 - (1) **The district court clerk must:**
 - (A) retain the assembled record, unless this court, on motion or sua sponte, orders otherwise; and
 - (B) send to this court a certified copy of the docket entries instead of the record.
 - (2) **Archival Storage.** The district court clerk must not send the record to archival storage until this court issues its mandate.
- (b) **Access of Parties and Counsel to the Original Record.**
 - (1) **Material Not Subject to a Protective Order; Inspection and Copying.** When a notice of appeal is filed, the trial court clerk must permit a party or counsel for a party to inspect and copy the nonconfidential original papers, transcripts, and exhibits to prepare the appendix. This inspection and copying is subject to reasonable regulation by the trial court.
 - (2) **Material Subject to a Protective Order; Inspection and Copying.** A party or counsel for a party must be permitted to inspect and copy material in the record governed by a protective order of the trial court in

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(D) If the reporter fails to file the transcript on time, the circuit clerk must notify the district judge and do whatever else the court of appeals directs.

(2) **District Clerk's Duty to Forward.** When the record is complete, the district clerk must number the documents constituting the record and send them promptly to the circuit clerk together with a list of the documents correspondingly numbered and reasonably identified. Unless directed to do so by a party or the circuit clerk, the district clerk will not send to the court of appeals documents of unusual bulk or weight, physical exhibits other than documents, or other parts of the record designated for omission by local rule of the court of appeals. If the exhibits are unusually bulky or heavy, a party must arrange with the clerks in advance for their transportation and receipt.

(c) **Retaining the Record Temporarily in the District Court for Use in Preparing the Appeal.** The parties may stipulate, or the district court on motion may order, that the district clerk retain the record temporarily for the parties to use in preparing the papers on appeal. In that event the district clerk must certify to the circuit clerk that the record on appeal is complete. Upon receipt of the appellee's brief, or earlier if the court orders or the parties agree, the appellant must request the district clerk to forward the record.

(d) [Abrogated.]

(e) **Retaining the Record by Court Order.**

(1) The court of appeals may, by order or local rule, provide that a certified copy of the docket entries be forwarded instead of the entire record. But a party may at any time during the appeal request that designated parts of the record be forwarded.

(2) The district court may order the record or some part of it retained if the court needs it while the appeal is pending, subject, however, to call by the court of appeals.

(3) If part or all of the record is ordered retained, the district clerk must send to the court of appeals a copy of the order and the docket entries together with the parts of the original record allowed by the district court and copies of any parts of the record designated by the parties.

(f) **Retaining Parts of the Record in the District Court by Stipulation of the Parties.** The parties may agree by written stipulation filed in the district court that designated parts of the record be retained in the district court subject to call by the court of appeals or

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accordance with that order. If this court modifies or annuls the protective order, the access of a party or counsel is governed by the order of this court.

(c) **Preserving a Protective Order on Appeal.** Any portion of the record that was subject to a protective order in the trial court remains subject to that order unless otherwise ordered.

(d) **Agreement by Parties to Modify a Protective Order; Certificate of Compliance.** If any portion of the record in the trial court is subject to a protective order and a notice of appeal has been filed, each party must promptly review the record to determine whether protected portions need to remain protected on appeal. If a party determines that some portions no longer need to be protected, that party must seek an agreement with the other party. Any agreement that is reached must be promptly presented to the trial court, which may issue an appropriate order. Whether or not an agreement is reached, each party must file a certificate of compliance within 45 days of docketing stating it complied with this rule. This Federal Circuit Rule 11(d) does not apply in a case arising under 19 U.S.C. § 1516a.

(e) **Motion to Modify the Protective Order.** A party may move at any time in this court to modify a protective order to remove protection from some material or to include another person within its terms. This court may decide the motion or may remand the case to the trial court. This court, sua sponte, may direct the parties to show cause why a protective order should not be modified.

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request by a party. The parts of the record so designated remain a part of the record on appeal.

(g) **Record for a Preliminary Motion in the Court of Appeals.** If, before the record is forwarded, a party makes any of the following motions in the court of appeals:

- for dismissal;
 - for release;
 - for a stay pending appeal;
 - for additional security on the bond on appeal or on a supersedeas bond; or
 - for any other intermediate order —
- ~~the district clerk must send the court of appeals any parts of the record designated by any party.~~

Rule 12. Docketing the Appeal; Filing a Representation Statement; Filing the Record

- (a) **Docketing the Appeal.** Upon receiving the copy of the notice of appeal and the docket entries from the district clerk under Rule 3(d), the circuit clerk must docket the appeal under the title of the district-court action and must identify the appellant, adding the appellant's name if necessary.
- (b) **Filing a Representation Statement.** Unless the court of appeals designates another time, the attorney who filed the notice of appeal must, within 10 days after filing the notice, file a statement with the circuit clerk naming the parties that the attorney represents on appeal.
- (c) **Filing the Record, Partial Record, or Certificate.** Upon receiving the record, partial record, or district clerk's certificate as provided in Rule 11, the circuit clerk must file it and immediately notify all parties of the filing date.

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Rule 12. Docketing the Appeal

The clerk must notify all parties of the date the appeal is docketed.